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No. 12, Original.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

STATE OF ARIZONA, *Complainant*,

v.

STATE OF CALIFORNIA, STATE OF NEVADA, STATE OF UTAH, STATE OF NEW MEXICO, STATE OF COLORADO, STATE OF WYOMING, AND RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, *Defendants*.

MOTION BY DEFENDANT STATES TO DISMISS THE BILL OF COMPLAINT, AND BRIEF OF THE STATES OF COLORADO, NEW MEXICO AND NEVADA IN SUPPORT THEREOF.

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MOTION BY THE DEFENDANTS TO DISMISS THE BILL OF COMPLAINT.

Now come the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming, by the Attorney General of each State, and move, jointly and severally, that the bill of complaint be dismissed, for the reasons:

I.

This Honorable Court is without jurisdiction of the subject matter of the bill of complaint, for the reason that the same does not present for adjudication any case or controversy of which the Court can take judicial cognizance.

II.

The bill of complaint does not join the United States, which is an indispensable party to this suit.

III.

The bill of complaint does not state facts sufficient to constitute a cause of action against the said defendants or either or any of them.

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BRIEF OF THE STATES OF COLORADO, NEW MEXICO AND NEVADA IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT.

State of the Pleadings.

Upon leave granted, the State of Arizona filed in this Court an original bill of complaint against the six other States of the Colorado River Basin and the Secretary of the Interior of the United States. On November 24, 1930, process was made returnable on January 12, 1931. All of the defendants have moved to dismiss the complaint.

Questions Presented.

1. Does the United States Supreme Court have jurisdiction of the subject-matter of this suit?

2. Is any cause of action within the jurisdiction of this Court alleged against the defendant States, or any of them?

Statement.

The bill asks this Court to decree that each and every provision of the Colorado River Compact and of the Boulder Canyon Project Act (45 Stat. 1057) is unconstitutional and void and to enjoin each of the defendants from carrying out any provision of the Compact or Act or any contract based upon such Compact or Act. (Bill, 39.)

The Compact and the Act are set forth as appendices to the bill of complaint. (Pp. 50, 58.) As said in the proclamation of the President on June 25, 1929 (see Bill, 22), the Compact has been approved by the States of California, Colorado, Nevada, New

Mexico, Utah, and Wyoming; and by the Act it was approved by Congress. Sec. 13 (a), Bill, 74.)

The Compact apportions the greater part, but not all, of the water of the Colorado River and its tributaries. The Colorado River territory is divided into an Upper Basin and a Lower Basin at Lee Ferry, a point in the Colorado River near the Northern boundary of the State of Arizona. Article II of the Compact provides (Bill, 52):

> (f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.
>
> (g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry.

Art. III of the Compact provides (Bill, 52-54):

Article III.

> (a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use

of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water which can not reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after

October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment, as provided in paragraph (f), any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System, as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

Section 13 (a) of the Boulder Canyon Project Act approves (Bill, 74) the Colorado River Compact and it is now effective.

By the Boulder Canyon Project Act the Secretary of the Interior is authorized to construct a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon to create a storage reservoir subject to the terms of the Colorado River Compact.

The Colorado River Compact assures to the Lower Basin a minimum average flow of 7,500,000 acre-feet in the main stream of the Colorado River at Lee Ferry. According to the bill (p. 8) 1,000,000 acre-feet enter the river between Lee Ferry and Laguna Dam, and this does not include water from the Gila River, which enters the Colorado River ten miles below Laguna Dam. (Bill, 7.)

Arizona is not forbidden to make additional appropriations of water at the present time, or at any future time.

The complainant alleges that there are numerous sites which are suitable for the construction, maintenance, and operation of dams and reservoirs the development of which would long since have commenced, but for the passage of the Boulder Canyon Project Act (Bill, 12); but the only site which it names is at Black Canyon, on the boundary line between Arizona and Nevada (Bill, 10); and the State does not show that it would be possible for any one other than the United States to secure title to the land which would be used in the construction of a dam and reservoir at that site, nor that it would be possible for any permittee of the State of Arizona to construct a dam at that point, or at any other point on the river where it constitutes a boundary between two States, without the consent of a State which is a party to the Colorado River Compact, and which presumably would not grant such consent except in furtherance of the purposes of the Compact.

The first section of the Act (Bill, 58) declares that the law is enacted

> for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financial solvent undertaking. * * *

Section 9 (Bill, 71) ordains:

> That all lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry.

The section then provides for the disposition of such lands in accordance with the provisions of the reclamation law. The complainant contends (Bill, 32) that the dam and reservoir which the Act purports to authorize the Secretary of the Interior to construct is larger than is necessary for the reclamation of public lands. The complainant does not, however, deny that the United States proposes to use water from the reservoir for the reclamation of public lands.

Arizona also contends that over the waters of this boundary stream, even where it has political jurisdiction only to the middle of the stream (Constitution of Arizona, Article I), it can maintain against other States and against the United States the same control which it might maintain against its own citizens. These defendants submit that as against other sovereignties the only right of the complainant is to a fair apportionment of the water; that that apportionment is best made by negotiation between the sovereignties; that the carrying out of the immediate plans of the Compact States and of the United States will not deprive the State of Arizona of a fair share of the water.

The State of Arizona is not a party to the Compact or bound by its terms, nor is it deprived of any right to appropriate water of the Colorado River which

it would possess if the Colorado River Compact were not in existence.

These defendants assert that by the construction of the Boulder Canyon reservoir waters will be conserved that otherwise would be lost to all the states of both Basins, and a larger quantity of water will be made available for beneficial use in the Lower Basin, and a larger quantity retained for use in the Upper Basin than if the reservoir were not built.

SUMMARY OF ARGUMENT.

These defendants state that the Bill fails to present for adjudication any case or controversy of which the Court can take judicial cognizance, for the reason that the rights, against the alleged invasion of which the injunction is prayed for, are purely political rights, and such an issue is one in respect of which this Court has always said it cannot take judical cognizance.

Allegations in respect of non-navigability of the Colorado River and the reclamation of public lands contained in the Bill of Complaint do not state any issuable fact, because such allegations are only argumentative statements made for the purpose of laying the foundation for questioning the motives and purposes of Congress in enacting the Boulder Canyon Project Act, and it is not the province of the judicial branch of the Government to question the motives of the Congress.

The complaint does not state facts sufficient to constitute a cause of action for the reason that the complainant is not a party to the Colorado River Compact, and is not in a position to question its validity or constitutionality, since it cannot affect the sover-

eignty of the State of Arizona. Arizona cannot therefore invoke the jurisdiction of this Court for the purpose of construing the Compact or the Act of Congress approving the same and making it effective upon the property of the United States.

The Colorado River Compact is valid and constitutional since the States have power to enter into Compacts with other States or the United States with the consent of the Congress, which was obtained. The Compact involves subject-matter within the jurisdiction of contracting States, and is binding upon states and the United States.

The Boulder Canyon Project Act is constitutional.

The bill is without equity, for the reason that complainant nowhere offers to do equity, offering to equitably apportion the waters of the river system with her sister States.

ARGUMENT.

Bill of Complaint Does Not Present for Adjudication Any Case or Controversy of Which the Court Can Take Judicial Cognizance, or State a Cause of Action for Relief in Equity.

The complainant has joined the Secretary of the Interior with the six signatory states to the Colorado River Compact as parties defendant to an original bill filed in this Court and prays "that the Colorado River Compact and the Boulder Canyon Project Act, and each and every part thereof, be decreed to be unconstitutional, void and of no effect and that the defendants and each of them be enjoined and restrained from enforcing or carrying out said compact or said act or any of the provisions thereof."

These defendants assert that the Bill fails in two respects: First, to present for adjudication any case or controversy of which the Court can take judicial cognizance, and, second, to state any cause of action for equitable relief.

The gravamen of the Bill is that the Boulder Canyon Project Act is unconstitutional and void in that it:

"Is in *excess* of the *powers granted* to Congress by the Constitution of the United States" (Bill, p. 29), and that, its effect, if carried into execution by the Secretary of the Interior, will result in an invasion of Arizona's sovereign jurisdiction and right to control the water and other natural resources of said State; of its rights and those of its citizens, inhabitants and other property owners to appropriate and use said water and other natural resources, and of its sovereign authority and right to levy and collect taxes upon businesses and property used in connection therewith which, but for the operation of the Act, *would be* developed and result in "great increase in population, wealth, prosperity and taxable resources of said State."

These allegations constitute the sum total of the allegations contained in the Bill upon which the Complainant relies for the statement of a cause of action for equitable relief against the enforcement of the Boulder Canyon Project Act, and are epitomized and specified with particularity in Paragraph XXVIII, pp. 29, 30 and 31 and Paragraph XXXVI, pp. 38 and 39, which, read in connection with the prayer for relief at pages 39 and 40 of the Bill, clearly identifies the kind of cause for relief in equity against the enforcement of the act upon which complainant has placed its whole reliance.

These rights, against the alleged invasion of which the injunction is prayed, are purely political rights, upon the existence and alleged injury to which the complainant attempts to raise a purely political issue. Such an issue is one in respect of which this Honorable Court has always said it cannot take judicial cognizance.

State of Georgia v. Stanton, 6 Wall. 50.
State of N. J. v. Sargent, 269 U. S. 328.
Mass. v. Mellon, 262 U. S. 447.
State of Texas v. I. C. C., 258 U. S. 162.
Muskrat v. U. S., 219 U. S. 346, 361.
Stearns v. Wood, 236 U. S. 75, 78.

Aside from these political rights, no private civil, personal or property right of the State of Arizona or of anyone else is set forth in, or sought to be protected from injury, by the Bill.

While the Bill alleges that the State owns lands, the irrigation and reclamation of which will be defeated by the Act, and that the Act attempts to authorize the Secretary to utilize for public purposes the water and other natural resources of the State, it is apparent upon the face of the bill that said alleged rights, if ever to be affected by the operation of the act or compact at all, could possibly be affected thereby only incidentally and consequentially, and that, as stated by this Honorable Court in State of Georgia v. Stanton, *supra*:

> "This reference to property and statement concerning it are only by way of showing one of the grievances resulting from the threatened destruction of the state and in aggravation of it, not as a specific ground of relief. This matter of prop-

erty is neither stated as an independent ground, nor it is noticed at all in the prayers for relief. Indeed, the case as made in the bill would have stopped far short of the relief sought by the state and its main purpose and design could not be by restraining its remedial effect simply to the protection of the title and possession of its property. Such relief would have called for a very different bill from the one before us."

In addition to the foregoing allegations, scattered throughout the bill there are allegations from which the inference is to be drawn that the State of Arizona attempts to sue in behalf of its citizens, inhabitants and property owners as *parens patriae*, although the only rights of such citizens, inhabitants and property owners that the complainant would so protect are of the same public nature as those alleged by the state in its own behalf, and none of which could suffer any direct injury as the result of the execution of the Boulder Canyon Project Act or of the Colorado River Compact.

None of such citizens, inhabitants or property owners are made parties to the action. On the contrary, Arizona attempts to represent them as *parens patriae*, but this it cannot do for the reason that they are citizens, inhabitants and property owners of the United States as well as of the State of Arizona, which for that reason has no authority in such a case as this to assume to represent them in such a capacity.

In *Commonwealth of Massachusetts v. Mellon*, 262 U. S. 447; 43 Sup. Ct. 597, at page 600, this Court said:

"While the state under some circumstances may sue in that capacity for the protection of its

> citizens (Mo. v. Ill. and Chicago District, 180 U. S. 208, 241), it is no part of its authority or power to enforce their rights in respect of their relations with the Federal Government. In that field the United States, and not the state, is representative *parens patriae*, when such representation becomes appropriate; to the former and not to the latter they must look for such protective measures as flow from that status."

It is therefore apparent that the question attempted to be presented, and the only question that could be presented for adjudication, in connection with such a prayer for relief against the enforcement of such an Act of Congress or compact between sovereign states by the State of Arizona acting in its sovereign, governmental and political capacity as a state is: "Has Congress the power to legislate for the purposes declared in the act, and have the states the authority with the consent of Congress to enter into such a compact?", because those questions are questions which, as between the State of Arizona, acting in such a capacity, and the Congress acting in its legislative capacity as a department of the United States Government, and the signatory states to the compact acting in their sovereign capacity as states of the Union, are purely political questions; for that reason they are questions of which courts cannot take judicial cognizance.

We therefore submit that the State of Arizona, not having attempted to state any cause of action for relief against the execution of either the Boulder Canyon Project Act or the Colorado River Compact on the ground that they, or either of them, will violate any private civil, personal or property right of

said State or of any person, corporation, citizen or inhabitant thereof, the bill wholly fails to present for adjudication any case or controversy of which the Court can take judicial cognizance or to state any cause for equitable relief whatever. In being so limited to an effort to secure political relief, the bill must be dismissed with prejudice for the reason that it furnishes nothing by which to amend and could not possibly be amended without making a new bill.

> "A complainant cannot be permitted, under the guise of an amendment, to make a new bill."
>
> *U. S. v. Whitted*, 245 Fed. 629.
> *Shields v. Barrow*, 17 Howard 130.

Allegations in Respect of the Navigability of the Colorado River and the Reclamation of Public Lands.

At pages 6, 7, 31 and 32, the Bill contains allegations concerning the navigability of the Colorado River and the Reclamation of Public Lands, which, instead of having been made for the purpose of stating a cause of action for equitable relief against the enforcement or carrying out of the Act of Congress or the six-State Compact, are, without equivocation, made for the distinct purpose of questioning the motives and purposes of Congress in enacting the Boulder Canyon Project Act.

This purpose is distinctly alleged with certainty on pages 31 and 32 of the Bill as follows:

> "The recital in said act that the purpose thereof is the improvement of navigation and the reclamation of public lands is a mere subterfuge and false pretense. That the improvement of

navigation is not the purpose of said act is evident from the fact that the Colorado River is not navigable (etc.) * * * That the reclamation of public land is not the purpose of said act is evident from the fact that 75 per cent of all land which will or can be reclaimed or benefited by the construction of the dam * * * is privately owned land, etc.)." (Bill, pp. 31, 32.)

These are the conclusions which the complainant has drawn from the allegations respecting navigability and reclamation to which reference is had, and, we respectfully submit that they state the purpose and intent of the allegations in words too plain to leave any room for misinterpretation.

That said allegations do not state any issuable fact and that they were not intended to state a cause of action or even remotely relied upon as a ground of relief, we submit, is rendered doubly apparent by the further facts appearing on the face of the Bill:

(1) Neither the non-navigability of the Colorado River nor any lack of reclaimable public lands are included within any of the alleged reasons upon which the complainant relies, and which it has specified with particularity at pages 29, 30 and 31 of the Bill, as the grounds upon which it bases the allegation that:

> "Said Boulder Canyon Project Act is in excess of the powers granted to Congress by the Constitution of the United States, and is unconstitutional and void." (Bill, p. 29.)

This and the other allegations on pages 29, 30 and 31, and pages 38 and 39 of the Bill to which we have referred above, raise a distinct, and the only, issue

raised in the Bill by which the complainant even attempts to question the constitutionality of, or upon which it in any sense relies for an injunction against the enforcement of, the Boulder Canyon Project Act.

(2) The allegations at said pages 6 and 7 of the bill to which we refer in this discussion state, in substance, that:

> "There are numerous rapids, cataracts and other natural obstructions, because of which, and because of the great fall and rapid flow of said river, navigation thereof in Arizona and on the boundary between Arizona and Nevada, has always been and is now utterly impossible." (Bill, p. 7.)

and that between Arizona and California and Arizona and Mexico the river is obstructed by sand bars, silt, Laguna Dam, the diversion of waters for irrigation and other purposes and that:

> "Because of said conditions, said river has never been, and is not now, a navigable river." (Bill, p. 8.)

Our motion to dismiss admits any facts well pleaded by the complainants and all reasonable inferences to be drawn therefrom, but it does not admit the arguments it has made nor the conclusions it has seen fit to draw from such facts as it has alleged.

> *U. S. v. Des Moines, etc. Co.*, 142 U. S. 544.
> *Demaison v. Thomas Mfg. Co.*, 94 Fed. 654.

But are the facts to which we referred above well pleaded; do they raise any issue of fact whatever? We submit that clearly they do not for the following reasons:

Any one or all of the obstructions alleged in the bill may exist in fact without rendering the river a non-navigable stream in that it may be susceptible of navigation regardless of any or all of the said natural or artificial obstructions.

Economy Light Co. v. U. S., 256 U. S. 121, 122.
St. Anthony Falls v. St. Paul, etc. Co., 168 U. S. 349.
The Montello, 20 Wall 430, 440-443; *The Daniel Ball*, 10 Wall. 557.
U. S. v. Chandler-Dunbar Co., 229 U. S. 53.

The facts that the river is not navigable in its entirety or that obstructing falls or rapids may be of such a nature as to defeat navigation in places does not render such a stream a non-navigable stream if it can be used for purposes of commerce above or below such falls or rapids. Neither is the existence of silt, soft mud or sand bars the true criterion by which the navigability or non-navigability of a stream is to be determined.

41 C. J. 413, 414.
St. Anthony Falls Co. v. Minneapolis Co., 168 U. S. 349.
Economy L. & P. Co. v. United States, 256 Fed. 792, aff'd, 256 U. S. 113.
Hubbard et al. v. Fort et al., 188 Fed. 987.
Western Union Co. v. Inman, 43 Fed. 85.
The Stearns Dredge, 222 Fed. 576.

Therefore, the allegations of this bill amount to nothing more than that the Colorado River is not a navigable stream. Even stronger allegations respecting the navigability of a stream were made in *Walker v. Allen*, 72 Ala. 456, wherein the Alabama Court said:

> "The bill contained no more than an averment that the stream is a navigable river. * * * The bill avers consequently a legal conclusion omitting an averment of the facts from which it can be drawn by the court. Such an averment is insufficient and renders the bill obnoxious to the first of the causes of demurrer."

In respect of the reclamation of public lands the allegations of the bill consist only of a statement of fact to the effect:

> "That the reclamation of public lands is not the purpose of said act is evident from the fact that 75 per cent of all land which will or can be reclaimed or benefited by the construction of the dam, etc., is privately owned land (etc.)."

Instead of raising any issue in respect of reclamation, this allegation constitutes an admission that there are public lands to be reclaimed and benefited by the construction of the dam or reservoir. Consequently, we submit that it is apparent upon the face of the bill that no issuable fact, either in respect of the navigability of the Colorado River or the reclamation of public lands, is raised by the bill and that in respect of both navigability and the reclamation of public lands the allegations of the bill consist only in argumentative statements made for the purpose of laying a foundation for the conclusions that:

> "(a) Because of said conditions, said river has never been and is not now a navigable river." (Bill, p. 7.)

and that: (b) "the recital in said act that the purpose thereof is the improvement of navigation and the

reclamation of public land is a mere subterfuge and false pretense." (Bill, p. 31.) We are therefore brought to the conclusion that in so far as these allegations are concerned, the bill does not even contemplate the statement of a cause of action or of an issue of fact relied upon by the complainant as a ground for relief in equity, but that these allegations in respect of the navigability of the stream and the reclamation of public lands were made for the sole purpose and with the specific intent of laying a foundation for questioning the motives and purposes of Congress in enacting the Boulder Canyon Project Act. But, as this Honorable Court said in *Smith v. Kansas City Title Co.*, 255 U. S. 210:

> "Nothing is better settled by the decisions of this court than when Congress acts within the limits of its constitutional authority, it is not the province of the judicial branch of the government to question its motives."

(3) Even had said allegations in respect of the navigability of the Colorado River been so pleaded that they might have, in fact, raised an issue of fact in respect of the navigability of the stream, the actual facts of which this Honorable Court can take judicial notice are that said stream is a navigable stream in fact and in law, as is abundantly exemplified in the brief of the Solicitor General. In such circumstances, had the complainant raised an issue of fact in respect of the navigability of the river, any such allegations would have to be disregarded for the reason that they would not be in accord with the actual facts of which the court could take judicial notice.

Jones v. United States, 137 U. S. 202.

(4) Section I of the Boulder Canyon Project Act declares the purposes of Congress in its enactment to be "improving navigation, * * * reclamation of public lands (etc.)." This declaration of purpose having been made by Congress itself in enacting the statute, the court is bound by the conclusive presumption that any facts essential to the validity of the act did, in fact, exist at the time of its enactment and that if any special finding of those facts was required to warrant the passage of the act, for the purposes of this case, the fact that Congress enacted the statute and in so doing declared its purpose to be the improvement of navigation, is the equivalent of such a finding.

U. S. v. Des Moines, 142 U. S. 544, 545.
Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U. S. 104.
6 R. C. L 112, 113, 114.

The Complaint is so Fatally Defective as to Require Dismissal With Prejudice.

The cause of action actually attempted to be alleged in the bill, being one questioning the constitutionality of an Act of Congress by claiming rights which are merely political, and of which the court cannot take judicial cognizance, is fatally defective and cannot be amended to state a cause of action for the protection of private civil, personal or property rights for the reason that such a cause of action would make a new bill.

We submit that this conclusion is inevitable because of the fact that, having attempted to state a cause of action questioning the constitutionality of the act upon the distinct theory that "Said act is in excess

of the powers granted to Congress by the Constitution" and that its effect, if enforced, would be to invade its political rights, the complainant thereby attempted to present to this Honorable Court for adjudication a political issue of which it can not take judicial cognizance, without even attempting to question the constitutionality of the act upon the ground that, notwithstanding the unquestioned power of Congress to improve navigation, it *abused* that power by assuming to enact the Boulder Canyon Project Act for the declared purpose of improving the navigability of the Colorado River when, in fact, it "is not now and has never been a navigable river." Such a cause of action would be one to question the constitutionality of the act upon a ground which would involve a question of *fact* of which the court can not take judicial notice and that question of fact one which would be entirely in conflict with the declared purpose of Congress in enacting the statute by which, as shown hereinbefore, the court is conclusively bound to take judicial notice as a matter of law. Therefore, we are again brought to the conclusion that the bill cannot, by way of amendment, be made to state such a new cause of action.

The Boulder Canyon Project Act is Constitutional.

The defendant States assert the constitutionality of the Act but, except for the provisions relating to the Compact, do not argue the question because it is presented in the brief of the Government. Sections 8 (a), 13 (b), (c) and (d) of the Act (Bill 70, 75), impressing upon the management of the Boulder Canyon Project and its water users the interbasinal division of water made by the Compact and regulating the

use of the public lands of the two Basins, are valid as an exercise of the Constitutional power of the Congress to regulate the use and to dispose of the property of the United States. *Constitution*, Art. IV, Sec. 3; *Irvine v. Marshall*, 20 How. 558, 561-562; *Gibson v. Choteau*, 13 Wall. 92, 99; *Camfield v. United States*, 167 U. S. 518-524, 525-6; *Stearns v. Minnesota*, 179 U. S. 223, 250; *Butte City Water Co. v. Baker*, 196 U. S. 119, 126; *Kansas v. Colorado*, 206 U. S. 46, 92; *Light v. United States*, 220 U. S. 523, 536-7; *United States v. Midwest Oil Co.*, 236 U. S. 459, 475; *Utah Power & Light Co. v. United States*, 243 U. S. 389, 403-5; *Oregon & California Railroad Co. v. United States*, 243 U. S. 549, 553; *McKelvey v. United States*, 260 U. S. 353, 358-9; *United States v. Alford*, 274 U. S. 264, 267; *Sinclair v. United States*, 279 U. S. 263, 297; *United States v. Hanson*, (C. C. A.) 167 Fed. 881, 883-4.

Arizona is Not a Party to the Colorado River Compact and is Not in a Position to Question its Validity or Constitutionality.

The Colorado River Compact forms the basis for the future comprehensive development of the resources of the Colorado River System. The Boulder Canyon Project is but one unit of that ultimate development. The Compact was formulated by Commissioners for the seven Colorado River States, including Arizona, and by a representative of the United States, pursuant to previous consent of Congress. 42 Stat. at Large, 171. The inducing causes are stated in the Appendix. It was ratified by all the signatories, except Arizona, in 1923.

Arizona having taken no action and flood conditions requiring prompt relief, thereafter the six approving States, by special Acts of their Legislatures, agreed to make the Compact effective with respect to the six approving States and Congress, by Section 13 of the Boulder Canyon Project Act (Bill 74), approved the Compact, concurred in the special agreement and made the Compact effective upon property of the United States within the Colorado River Basin.

This action by the United States and the six approving States, did not and could not affect the sovereignty of the State of Arizona (*Stearns v. Minnesota*, 179, U. S. 223, 244-245) nor make that State a party to the Compact, and was without prejudice to the rights of that State hereafter to become a party by approval of the Compact, to remain without the Compact or to take other action as the State might be advised.

The State of Arizona is not a party to the Compact nor to the special agreement making the Compact effective upon a six state basis. The State is not in a position to question the validity of the Compact, to assert that the Compact is unconstitutional, or to invoke the jurisdiction of this Court for the purpose of construing the Compact.

The Colorado River Compact is Valid and Constitutional.

The State of Arizona asserts that the Colorado River Compact is void and unconstitutional. Assuming, but not conceding, that the State is in a position to raise that question, the charge is without merit. The Compact is necessary to prevent litigation, strife

and turmoil throughout the entire Colorado River Basin and for protection of the future development and general welfare of the six approving States. It assures harmonious cooperation between federal and state governments. It is a valid agreement among six States of the Union, approved by the Congress and concluded by the approving States in the exercise of their inherent sovereignty, in conformity with the Constitution. The inducing causes and the facts surrounding its negotiation and conclusion are stated in the Appendix.

The Compact is not to be questioned upon the ground that the signatories are States admitted since the adoption of the Constitution. Equality of the States of the Union, original and new, is indisputable. The States last to be admitted possess all the powers, dominion and sovereignty belonging to each of the original thirteen. *Scott vs. Lattig*, 227 U. S. 229, 242; *Kansas vs. Colorado*, 206 U. S. 46, 97; *Coyle vs. Smith*, 221 U. S. 553.

The States have power to enter into compacts or agreements with other States or with the United States. *Poole vs. Fleeger*, 11 Pet. 185, 209-210; Ib. (Baldwin, J.) Appendix to 11 Pet. pp. 170 a, 174-176; *Rhode Island vs. Massachusetts*, 12 Pet., 657, 725-731; *Stearns vs. Minnesota*, 179 U. S. 223, 245; *Virginia vs. Tennessee*, 148 U. S. 503; *Holmes vs. Jennison*, 14 Pet. 540, 570; *Washington vs. Oregon*, 214 U. S. 205, 218; *United States vs. Texas*, 143 U. S. 621, 646; 162 U. S. 1.

"A State may make a compact with all the States, constituting as one body the nation," respecting the public lands and other property of the United States, at the time of admission of the State. *Stearns vs.*

Minnesota, 179 U. S. 223, 244-245. Such was the compact between Arizona and the United States, in the Act of admission (Enabling Act; Act of June 20, 1910, c. 310, Sec. 28; 36 Stat. 557, 575), under which the United States subsequently reserved the Colorado River Canyon in Arizona for power purposes.

Art. I, Sec. 10, par. 3, of the Constitution provides:

> "No State shall without consent of Congress * * * enter into any agreement or compact with another State."

Such consent having been obtained, the States are, "in this respect restored to their original inherent sovereignty; such consent being the sole limitation imposed by the Constitution, when given, left the States as they were before * * * whereby their compacts became of binding force * * * operating with the same effect as a treaty between sovereign powers" and "become conclusive upon all the subjects and citizens thereof, and bind their rights." *Rhode Island vs. Massachusetts,* 12 Pet. 657, 725. See *Poole vs. Fleeger,* 11 Pet. 185, 209-210.

Consent of Congress may be obtained either before or after conclusion of the Compact and may be express or implied. *Wharton vs. Wise,* 153 U. S. 155, 168, 159; *Virginia vs. Tennessee,* 148 U. S. 503, 521, 525; *Virginia vs. West Virginia,* 11 Wall. 39; *Penn. vs. Wheeling etc. Co.,* 13 How. 518; *Rhode Island vs. Massachusetts,* 12 Pet. 657, 725; *Poole vs. Fleeger,* 11 Pet. 185, 209-210; Ib. (Baldwin, J.) Appendix to 11 Pet. pp. 170 a. 174-176; *Green v. Biddle,* 8 Wheat 1, 86.

No form of compact is required. As in the present

case, a compact may be in form of a writing subscribed by the agreeing States, or in form of concurrent legislation or by any other method. The Colorado River Compact, consisting of an approved written document and concurring Acts of the Legislatures of the six approving States and of The Congress, constitutes a valid compact even though the language used in the several Acts may vary. *Olin v. Perry Kitzmiller*, 259 U. S. 260; *Wharton v. Wise*, 153 U. S. 155, 168; *Virginia v. Tennessee*, 148 U. S. 503, 517; *Washington v. Oregon*, 214 U. S. 205, 218; *Rhode Island v. Massachusetts*, 12 Pet. 657, 725-731; *Holmes v. Jennison*, 14 Pet. 540, 570.

The Compact involves subject matter within the jurisdiction of the contracting States, and a valid and constitutional exercise of their sovereignty. *Wyoming v. Colorado*, 259 U. S. 419; *Hudson Water Co. v. McCarter*, 209 U. S. 349, 354-357; 70 N. J. Eq. 695, 717; *Kansas v. Colorado*, 185 U. S. 125; 206 U. S. 46; *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237-238; *Richey etc. Co. v. Miller & Lux*, 218 U. S. 258; *Missouri v. Illinois*, 180 U. S. 208; 200 U. S. 496; *Gutierres v. Albuquerque L. & L. Co.*, 188 U. S. 545, 552, 553; *Shively v. Bowlby*, 152 U. S. 1.

The Act of Congress (42 Stat. at Large 171) consents that the Colorado River States may "negotiate and enter into a compact or agreement * * * providing for an equitable division and apportionment among said States of the water supply of the Colorado River and of the streams tributary thereto."

The Colorado River Compact was concluded November 24, 1922, pursuant to said Act. Sec. 13, of the Boulder Canyon Project Act (Bill, p. 74) uncondi-

tionally approves the Compact, to be effective upon either a six state or a seven state basis. The State of Arizona may accept or reject the Compact, at its election, but the Compact is now effective among the six approving States and the United States. Appropriations of funds by Congress since approval of the Compact have "signified the consent of that body to its validity". *Green v. Biddle,* 8 Wheat. 1, 26.

The Compact binds the United States, its rights "in or to the waters of the Colorado River and its tributaries", and its property within the Colorado River drainage. See Sec. 13, par. b, c, and d, Boulder Canyon Project Act (Bill, 75). It binds and is conclusive upon the six approving States, their citizens and inhabitants and their rights and property within the Colorado River Basin. *Rhode Island v. Massachusetts,* 12 Pet., 657, 725; *Kansas v. Colorado,* 206 U. S. 46, 98; *Georgia v. Tennessee Copper Co.,* 206 U. S. 230, 237-238; *Richey & Co., v. Miller & Lux,* 218 U. S. 258, 261; *Virginia v. Tennessee,* 148 U. S. 503, 525.

Rights vesting under the Compact are protected from impairment by the Constitution. *Olin v. Perry Kitzmiller,* 259 U. S. 260; *Green v. Biddle,* 8 Wheat. 1; *Hawkins v. Barney,* 5 Pet. 457; *Stearns v. Minnesota,* 179 U. S. 223; *Pennsylvania v. Wheeling etc. Bridge Co.,* 13 How. 518; *Tucker v. Ferguson,* 22 Wall. 143, 155.

The Compact is conclusive with respect to the subject matter. Its construction is a judicial question. *Poole v. Fleeger,* 11 Pet. 185, 209-210; Ib. (Baldwin, J.), Appendix to 11 Pet. pp. 170 a., 175-176; *Rhode Island v. Mass.,* 12 Pet. 657, 725; *Sim v. Irvine,* 3 Dall, 425, 454; *Marlatt v. Silk,* 11 Pet. 1, 2, 18; *Burton*

v. Williams, 3 Wheat. 529, 533. As stated in *Marlatt v. Silk, supra*:

> "The question arises under, and is to be decided by a compact between two States where, therefore, the rule of decision is not to be collected from the decisions of either State, but is one, if we may so speak, of an international character."

The Compact was negotiated and concluded with consent of the Congress and the Congress thereafter approved it. It is effective among competent signatories and treats of subject matter within their jurisdiction. It is valid and constitutional.

The Colorado River Compact Works no Injury to the State of Arizona.

The State of Arizona has not approved the Compact and is not bound by its provisions. The enforcement of the Compact among the approving States will not injure the State of Arizona.

The allegations of injury by the Compact are set forth in Paragraph XIV of the Bill of Complaint (pp. 16-19). The first two refer to alleged needs of that State, without regard to the actual needs of the other States where the river has its origin, and to alleged errors in the partial allocation of water to the two Basins by the Compact. The statements respecting partial allocations are incomplete and inaccurate and do not reveal how, if at all, the provisions referred to could work injury to that State.

The next allegation complains of inclusion of the Gila River and its tributaries as a part of the Colorado River System. The Gila is one of the most im-

portant of the many tributaries of the Colorado River. It contributes its supply to the common water fund at Yuma, several miles above the diversion works of the enormous Imperial Valley Canal which serves the lands in both the United States and Mexico. Its sources are in the State of New Mexico, and there is nothing to distinguish the Gila from the Green, the Grand, the San Juan, or any other tributary. Allegations that its waters, to quite an extent, are used within the State of Arizona and that it is desirable that the waters be there first used, in no manner change its tributary character or reveal wherein the Compact injures the State. The Compact is inoperative as regards that State, and it will so remain until approved by the state Legislature.

Lastly, it is complained that the Compact permits the party States to use some part of the allocated waters upon territory outside the drainage basin of the Colorado River System. Such diversions and uses are universally permitted throughout the Western States, where irrigation is practiced. *Wyoming v. Colorado*, 259 U. S. 419, 466.

The Bill is Without Equity for the Reason that Therein the Complainant Nowhere Offers to do Equity.

In total disregard of the definitely stated principles of interstate common law heretofore enumerated by this Honorable Court in *Kansas v. Colorado*, *Wyoming v. Colorado*, and in other cases, the State of Arizona asserts the need, the sovereign power and right and the definite intention to appropriate and use all of the waters of the Colorado River flowing through said State for the benefit of itself, its citizens, inhabitants and other property owners to the

exclusion of the necessities and rights of her sister states through which the river flows. She offers no hope of any equitable apportionment of said waters as between herself and her sister states in the event her prayer for relief should be granted; and for this reason we respectfully submit that this is a suit for equitable relief and therefore one in which the maxim "He who seeks equity must do equity" calls for specific application.

CONCLUSION.

Wherefore for the reasons hereinbefore set forth these defendants respectfully submit that the Bill of Complaint be dismissed.

Respectfully submitted,

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APPENDIX.

The Colorado River Compact History and Inducing Causes.

The Colorado River and the flood conditions which necessitate its control, are discussed in Appendices A and B of the Solicitor General. From these and references herein, it appears:

The entire river system drains an arid region where otherwise fertile valleys and mesas require the artificial application of waters to sustain life and agriculture. Use of the waters is necessary to the life, health, prosperity and general welfare of the people of the States where such waters originate and to the development of the region, the growth of cities and institutions and to the support of government.

The drainage basin naturally is divided into two regions or basins, termed the "Upper Basin" and the "Lower Basin." The point of convenient demarkation between the two basins is Lee Ferry in northern Arizona, located at the head of the Grand Canyon and below those streams contributing to the river within the upper region. These two regions differ in soil, climate and other characteristics. The Upper Basin is traversed by many valleys of varying magnitude and is characterized by progressive development conforming to the overcoming of natural obstacles and to improvement in transportation. In the Lower Basin streams of erratic flow traverse desert areas but the lands are more accessible and natural conditions favor a more rapid development.

The results of investigations by the Reclamation Service, subsequent to the break of the river into the Salton Sea in 1905, were brought to the attention

of the people of the seven Colorado River States. It was evident that complete control of the flow of the waters of the river by reservoirs, was essential to satisfactory solution of Lower Colorado River problems. The investigations revealed that substantially all the flow of the Colorado River above the mouth of the Gila, could be controlled by an immense reservoir at or near Boulder Canyon, to be later supplemented by other reservoirs upon the main stream and tributaries above that point. But to render feasible the construction of a gigantic control reservoir at Boulder Canyon, it would be necessary to beneficially use all the waters there impounded, for power, irrigation, municipal and other purposes. Such beneficial use of all the waters of the river might give rise to monopolistic adverse claims as against the entire Upper Basin and might interfere with and there prevent future expansion of development.

The Compact was concluded to solve this, and other problems respecting future development of the river system.

The history of the origin of the Compact and the inducing causes are stated in:—Report of Hearings Senate Comm. Irr. and Recl., 69 Cong. 1st Sess., Re Colorado River Basin, pp. 312-313, 663-679; and in Report of Colorado River Commissioner for Colorado, Cong. Rec., Dec. 14, 1928, 70 Cong., pp. 601-610.

From these sources it appears:

In necessary self defense, the States of the Upper Basin opposed any and all further major developments, by reservoirs or otherwise, along the river in the Lower Basin, until protection was afforded future development within the Upper Basin. There were assurances that the water supply of the river is

ample to supply all present and future needs, if controlled by storage, and that no injury need result from construction of Boulder Canyon Reservoir and from uses of waters thereby. But former assertions of adverse claims resulting from uses of water by means of reservoirs upon interstate streams caused a demand for adequate protection to the States of origin from adverse claims on behalf of the beneficiary States of the lower river. Rep. of Hearings, *supra*, pp. 664-665, 695-700; 312.

A series of conferences followed between representatives of the interested States and federal officials. Cong. Rec. Dec. 14, 1928, 70 Cong., pp. 601-610. The first was at Salt Lake City, January 18-21, 1919. The Governor of Utah presided and resolutions were adopted favoring first development at the head waters of the Colorado River System, stating:

> "The history of irrigation throughout the world has shown that the greatest duty of water is had by first using it upon the upper reaches of the stream and continuing the use progressively downward. In other words, 'The water should first be captured and used, while it is young,' for it can then be recaptured as it returns from the performance of its duties and thus be used over and over again."

Similar conferences subsequently were held at Los Angeles where similar resolutions were adopted.

August 25-27, 1920, representatives of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and federal officials met at Denver. The Governors of several of the States participated and the Governor of Arizona presided. The resolutions adopted reaffirmed the principles an-

nounced in the resolutions adopted at the Salt Lake and Los Angeles conferences. But, after reciting that, from information presented by the Director of the Bureau of Reclamation of The United States "the water supply of the Colorado River drainage is sufficient to supply the present necessities of all the States whose territory is involved and that all present and future interference with development upon or from the upper reaches of the stream should be avoided," the following resolution was adopted:

> "Resolved, That it is the sense of this conference that the present and future rights of the several States, whose territory is in whole or in part included within the drainage area of the Colorado River, and the rights of the United States, to the use and benefit of the waters of said stream and its tributaries, should be settled and determined by compact or agreement between said States and the United States, with consent of Congress, and that the legislatures of said States be requested to authorize the appointment of a commissioner for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislature of each of said States and the Congress of the United States." (Rep. of Comm. *supra*, Cong. Rec. 601-605.)

At the 1921 sessions of their Legislatures, the seven Colorado River States authorized the appointment of commissioners for the purpose of negotiating a compact respecting the waters of the Colorado River and its tributaries. Commissioners having been named for each of the States, the Governors and Commissioners met at Denver, May 10, 1921, and adopted resolutions requesting Congress to authorize and

The President to appoint a representative for the United States to participate in the negotiations, and directing that the resolutions be laid before The President and The Congress by the Governors of the seven States. The resolutions were presented to The President May 19, 1921.

The resolutions are set forth in full in the Report of the Colorado River Commissioner for Colorado (Cong. Rec., December 14, 1928, 70 Cong., pp. 601-608). The statement accompanying the resolutions reads, in part:

> "The object of the pending legislation is to permit a settlement respecting the future utilization and disposition of the waters of the Colorado River, and of the streams tributary thereto, by compact between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.
>
> "The object is to determine the respective rights of the States to the use and disposition of the waters of this great river prior to any further large construction or extensive utilization of these waters, in order that the rights of the States and the Government may be settled and determined in advance of construction and before interstate or other controversies may arise."

Congress promptly consented to the proposed compact to provide for "an equitable division and apportionment among said States of the water supply of the Colorado River and of the streams tributary thereto, upon condition that a suitable person, who shall be appointed by The President of the United States, shall participate in said negotiations, as the representative of and for the protection of the inter-

ests of the United States" and thereafter make report to Congress.

The Act of Congress was approved August 19, 1921, and The President later named Herbert Hoover as the representative of the United States upon the Commission.

The Colorado River Compact was concluded at Santa Fe, New Mexico, November 24, 1922, after protracted negotiations and a number of public hearings in the region involved. The seven Colorado River States (including Arizona) were signatories.

The Compact was submitted to the Legislatures of the seven States at the 1923 sessions and was approved and ratified by all except the Legislature of Arizona. Report, Hearings Senate Comm. Irr. & Red. *supra*, pp. 312-313.

Failure of Arizona to ratify the Compact delayed proceedings for the ultimate construction of works for flood protection to lands, property and cities in both Arizona and California. The imminence of the flood peril prompted the introduction of bills before Congress to authorize the construction of Boulder Canyon Dam without awaiting approval of the Compact by Arizona and caused great pressure to be brought to bear upon the Upper Colorado River States and upon their Senators and Representatives in Congress, to authorize the construction of the reservoir without the protection which the Compact would afford.

The reservation of the Colorado River Canyon in Arizona, for power purposes, by the United States, pursuant to the compact between the United States and the State of Arizona in the Act admitting the State to the Union (Enabling Act; Act of June 20, 1910, C. 310, Sec. 28; 36 Stat. 557, 575) gave the

United States control of the canyon in Arizona. This reservation, if subjected to the Colorado River Compact, would become a source of protection to the Upper States as regards future claims from users of waters below Lee Ferry. This was a factor in the proceedings subsequent to 1923. Rep. of Hearings, Senate Comm. Irr. & Recl. *supra*, pp. 639, 601, 708.

Article XI of the Compact requires approval by the Legislatures of the seven signatory States. A special agreement among the six approving States was necessary to make the Compact effective among those States, without prejudice to the right of the State of Arizona to proceed as that State might elect. Such a special agreement was made among California, Colorado, Nevada, New Mexico, Utah and Wyoming, by concurrent legislation at the 1925 and subsequent sessions of their Legislatures. Rep. of Hearings, Senate Comm. Irr. & Recl. *supra*, pp. 312-313, 679-680, 683-687 and Congress enacted similar legislation by Sec. 13, Boulder Canyon Project Act. Bill, p. 74. The Act of Congress also impressed the Compact upon the reservations and property of the United States in the Colorado River Basin, including the Colorado River Canyon in Arizona. Bill Sec. 13b, 13c, 13d, p. 75.

The Compact is effective among the six approving States and the United States has approved it and made it effective upon either a six state or a seven state basis.

The Compact.

(Bill, p. 50)

The major purposes of the Colorado River Compact are thus stated in Article I:

"The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies, and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionment may be made."

Article II defines the Colorado River System to mean "that portion of the Colorado River and its tributaries within the United States of America."

The Colorado River Basin is divided into an "Upper Basin" and a "Lower Basin." The Upper Basin to include those parts of Arizona, Colorado, New Mexico, Utah and Wyoming "within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry." The Lower Basin to include all similar portions of the territory of Arizona, California, Nevada, New Mexico, and Utah below Lee Ferry. The Gila River drainage is a principal part of the Lower Basin.

"Beneficial consumptive use" is made the basis of apportionment. A considerable part of the waters diverted and used within the drainage basin of the

river system returns for further use and reuse, while waters diverted and used upon territory outside the drainage basin are wholly "consumed" as regards further benefits to the river system. Cong. Rec., Dec. 14, 1928, pp. 608-610. The latter class includes such diversions as those made for use in the Imperial Valley region, which drains into the Salton Sea, or those made by tunnels, aqueducts and canals through or over the divides such as the tunnel diversions in Colorado and Utah or the proposed aqueduct to Southern California cities. Apportionment of the waters of the Colorado River System was made by the Compact upon the basis of waters to be consumed by each Basin.

Article III allocates and apportions in perpetuity to the Upper Basin the "exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist." The same apportionment is made to the Lower Basin and, in addition thereto "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre feet per annum." In other words, the total apportionment to the Lower Basin is 8,500,000 acre feet per annum.

Respecting the international burden, the Compact provides that "if, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities" apportioned to the Upper Basin and the Lower Basin and "if such surplus shall prove

insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized" in addition to the flow at Lee Ferry guaranteed to the Lower Basin by the next provision of the compact.

The balance of water supply between the two basins is preserved by a guaranty by the Upper Basin States that they will not cause the flow of the river at Lee Ferry, to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series. This guaranty has no direct relation to the aggregate allocation of 8,500,000 acre feet per annum to the Lower Basin which is to be supplied out of that part of the whole Colorado River System within the Lower Basin.

Calls for and deliveries of water are to be confined to needs for agricultural and domestic purposes.

Further equitable apportionment of the remaining unallocated waters of the entire Colorado River System among the seven Colorado River States after forty years, is provided in the last two paragraphs of Article III.

Article IV makes use of waters for navigation subservient to uses for domestic and agricultural purposes, as regards interstate relations.

Provision is made for administration of the Compact and for settlement of interstate controversies by compacts and for immunity of the Indian Tribes, by Articles V, VI and VII and Article VIII protects then present perfected rights to the beneficial use of waters of the Colorado River System, which by Ar-

ticle III are to be supplied by apportioned waters, and defines relations between the two basins pending construction of a control reservoir.

Article XI provides that the Compact shall become binding and obligatory upon approval by the Legislatures of the seven signatory States and by the Congress. As already observed, this provision was modified by six States and by Congress to make the Compact effective upon all the signatory States except Arizona, by special concurrent legislation.

In brief, all waters of the Colorado River and all its tributaries in the United States are included. The right in perpetuity to consume a definite portion of the total water supply was allocated to each of the two natural divisions of the river drainage and the Lower Basin was allocated one million acre feet per annum more than was allocated to the Upper Basin where the river has its principal sources. Provision was made for any international burden and for a further allocation of any remaining waters among the seven States after forty years. Interstate uses were classified and the more important given dominance over the lesser. Provision was made for subordinate intrabasinal division of waters allocated and for settlement of interstate controversies by compacts. The requirement of seven state ratification was subsequently changed by legislative agreement to permit the Compact to become effective upon a six state basis without prejudice to Arizona.